

14013 PK-2

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-198257

DATE: June 12, 1980

MATTER OF: Progress Payments Pursuant to
Raytheon Company Contract

DIGEST:

Under fixed-priced, incrementally funded contract, progress payments may be made to contractor up to 80 percent of total contract price so long as progress payments do not exceed total amount of funds allotted to the contract.

Major S. R. Moody, USA, Disbursing Officer, Defense Contract Administration Services Region, Boston, Massachusetts, requests our decision on the propriety of certain progress payments under contract No. F08635-79-C-0043 with Raytheon Company. The Disbursing Officer disagrees with the contracting officer as to the extent of progress payments which may be allowed under the contract.

The total contract price is \$39,094,140 (subsequently increased to \$39,506,140 by change order). However, the contract is being incrementally funded, with \$12,000,000 allotted initially and \$18,978,500 allotted subsequently. An additional allotment of \$8,527,640 is scheduled for fiscal year 1981.

The contract provides that progress payments may not exceed 80 percent "of the total contract price." Using the \$39,506,140 figure to represent the total contract price, the contracting officer has approved progress payments to the contractor not to exceed 80 percent of \$39,506,140.

The Disbursing Officer believes that the total contract price means the total amount obligated so far to the contract. Under the Disbursing Officer's interpretation, the contractor has already been overpaid, since progress payments have been made in excess of 80 percent of \$30,978,500, the total amount obligated to the contract as of this date.

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We agree with the contracting officer's approach. Defense Acquisition Regulation E-509.7 defines the "contract price" to mean "the total amount fixed by the contract * * * to be paid for complete performance of the contract." Using this definition the contract price is \$39,506,140 for complete performance of the contract, not the amount allotted.

Nothing in the "Allotment of Funds" or "Limitation of Government's Obligation" clauses of the contract states otherwise. The "Allotment" clause provides that for purposes of the Limitation of Government's Obligation clause, the Government's contractual obligation only extended to the amount initially allotted (\$12,000,000), but that additional allotments were expected to be made as set forth in the contract schedule.

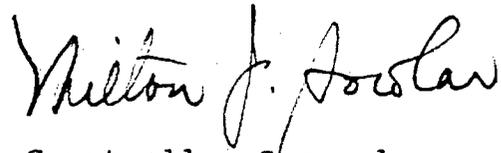
The "Limitations" clause provides that:

"(1) Of the total price * * * the sum of \$12,000,000 is presently available for payment and allotted to this contract. It is anticipated that from time to time additional funds will be allotted to this contract until the total price of these items is allotted." (The amount allotted to this contract was increased from \$12,000,000 to \$30,978,500.)

It is evident from the above that the Government's total obligation under the contract is limited to the amount of funds allotted to the contract, which amount may be less than the total contract price. The "Limitations" clause further provides that if additional funds are not allotted, the contract will be terminated for the convenience of the Government but that the Government will not be obligated in any event to pay or reimburse the contractor in excess of the amount allotted to the contract (paragraph 3 of the clause). Clearly there would not be any need to terminate the contract for convenience if, as the Disbursing Officer suggests, the total amount allotted represented the contract price. The contract would

simply expire without any need to invoke the termination procedure.

Therefore, although the contractor may be paid up to 80 percent of the total contract price under the "Progress Payments" clause, the payment may not exceed the total amount allotted to the contract.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States